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7  
8 **UNITED STATES DISTRICT COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**

10  
11 JUAN VALENCIA,  
12 Plaintiff,  
13 vs.

14  
15 EFREN G. GONZALEZ D/B/A  
16 BARRIERIA LUPITA NO 2; 7020 VAN  
17 NUYS BOULEVARD, LLC; and DOES 1  
to 10,  
18 Defendants.

**Case No.:**

COMPLAINT FOR INJUNCTIVE  
RELIEF AND DAMAGES FOR DENIAL  
OF CIVIL RIGHTS OF A DISABLED  
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES  
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL  
RIGHTS ACT;

3. CALIFORNIA'S DISABLED  
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY  
CODE;

5. NEGLIGENCE

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25 Plaintiff JUAN VALENCIA ("Plaintiff") complains of Defendants EFREN G.  
26 GONZALEZ D/B/A BARRIERIA LUPITA NO 2; 7020 VAN NUYS BOULEVARD,  
27 LLC; and DOES 1 to 10 ("Defendants") and alleges as follows:  
28

**PARTIES**

1  
2 1. Plaintiff is a California resident with a physical disability. Plaintiff suffers  
3 from paraplegia due to T11 and T12 spinal cord injury with fracture which substantially  
4 limits his ability to walk. Plaintiff requires the use of a wheelchair at all times when  
5 traveling in public.

6 2. Defendants are, or were at the time of the incident, the real property owners,  
7 business operators, lessors and/or lessees of the real property for a restaurant  
8 (“Business”) located at or about 7030 Van Nuys Blvd., Van Nuys, California.

9 3. The true names and capacities, whether individual, corporate, associate or  
10 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,  
11 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of  
12 Court to amend this Complaint when the true names and capacities have been  
13 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such  
14 fictitiously named Defendants are responsible in some manner, and therefore, liable to  
15 Plaintiff for the acts herein alleged.

16 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant  
17 times, each of the Defendants was the agent, employee, or alter-ego of each of the other  
18 Defendants, and/or was acting in concert with each of the other Defendants, and in doing  
19 the things alleged herein was acting with the knowledge and consent of the other  
20 Defendants and within the course and scope of such agency or employment relationship.

21 5. Whenever and wherever reference is made in this Complaint to any act or  
22 failure to act by a defendant or Defendants, such allegations and references shall also be  
23 deemed to mean the acts and failures to act of each Defendant acting individually, jointly  
24 and severally.

**JURISDICTION AND VENUE**

25  
26 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and  
27 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*  
28 *seq.*).

8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

## FACTUAL ALLEGATIONS

11. The Business is a restaurant business establishment, open to the public, and place of public accommodation that affects commerce through its operation.

12. While attempting to enter the Business during each visit, Plaintiff personally encountered a number of barriers that interfered with his ability to use and enjoy the goods, services, privileges, and accommodations offered at the Business.

- a. Defendants failed to comply with the federal standard for the restroom. The restroom was not accessible and violated various American with Disability Act Accessibility Guideline (“ADAAG”) requirements, including but not limited to:

14. These barriers and conditions denied Plaintiff full and equal access to the Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and patronize the Business; however, Plaintiff is deterred from visiting the Business because

1 his knowledge of these violations prevents him from returning until the barriers are  
2 removed.

3 15. Based on the violations, Plaintiff alleges, on information and belief, that  
4 there are additional barriers to accessibility at the Business after further site inspection.  
5 Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-  
6 Eleven, Inc.* 524 F.3d 1034 (9<sup>th</sup> Cir. 2008).

7 16. In addition, Plaintiff alleges, on information and belief, that Defendants  
8 knew that particular barriers render the Business inaccessible, violate state and federal  
9 law, and interfere with access for the physically disabled.

10 17. At all relevant times, Defendants had and still have control and dominion  
11 over the conditions at this location and had and still have the financial resources to  
12 remove these barriers without much difficulty or expenses to make the Business  
13 accessible to the physically disabled in compliance with ADDAG and Title 24  
14 regulations. Defendants have not removed such barriers and have not modified the  
15 Business to conform to accessibility regulations.

### 16 **FIRST CAUSE OF ACTION**

#### 17 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

18 18. Plaintiff incorporates by reference each of the allegations in all prior  
19 paragraphs in this complaint.

20 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual  
21 shall be discriminated against on the basis of disability in the full and equal enjoyment of  
22 the goods, services, facilities, privileges, advantages, or accommodations of any place of  
23 public accommodation by any person who owns, leases, or leases to, or operates a place  
24 of public accommodation. *See* 42 U.S.C. § 12182(a).

25 20. Discrimination, *inter alia*, includes:

- 26 a. A failure to make reasonable modification in policies, practices, or  
27 procedures, when such modifications are necessary to afford such  
28 goods, services, facilities, privileges, advantages, or accommodations

1 to individuals with disabilities, unless the entity can demonstrate that  
2 making such modifications would fundamentally alter the nature of  
3 such goods, services, facilities, privileges, advantages, or  
4 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).

5 b. A failure to take such steps as may be necessary to ensure that no  
6 individual with a disability is excluded, denied services, segregated or  
7 otherwise treated differently than other individuals because of the  
8 absence of auxiliary aids and services, unless the entity can  
9 demonstrate that taking such steps would fundamentally alter the  
10 nature of the good, service, facility, privilege, advantage, or  
11 accommodation being offered or would result in an undue burden. 42  
12 U.S.C. § 12182(b)(2)(A)(iii).

13 c. A failure to remove architectural barriers, and communication barriers  
14 that are structural in nature, in existing facilities, and transportation  
15 barriers in existing vehicles and rail passenger cars used by an  
16 establishment for transporting individuals (not including barriers that  
17 can only be removed through the retrofitting of vehicles or rail  
18 passenger cars by the installation of a hydraulic or other lift), where  
19 such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).

20 d. A failure to make alterations in such a manner that, to the maximum  
21 extent feasible, the altered portions of the facility are readily  
22 accessible to and usable by individuals with disabilities, including  
23 individuals who use wheelchairs or to ensure that, to the maximum  
24 extent feasible, the path of travel to the altered area and the  
25 bathrooms, telephones, and drinking fountains serving the altered  
26 area, are readily accessible to and usable by individuals with  
27 disabilities where such alterations to the path or travel or the  
28 bathrooms, telephones, and drinking fountains serving the altered area

1 are not disproportionate to the overall alterations in terms of cost and  
2 scope. 42 U.S.C. § 12183(a)(2).

3 21. Handles, pulls, latches, locks, and other operating devices on accessible  
4 doors shall have a shape that is easy to grasp with one hand and does not require tight  
5 grasping, tight pinching, or twisting of the wrist to operate. Lever-operated mechanisms,  
6 push-type mechanisms, and U-shaped handles are acceptable designs. When sliding doors  
7 are fully open, operating hardware shall be exposed and usable from both sides.  
8 Hardware required for accessible door passage shall be mounted no higher than 48 in  
9 (1220 mm) above finished floor. 1991 ADA Standards § 4.13.9.

10 22. Here, Defendants failed to provide accessible handle and locks on the  
11 restroom door. The door consisted of a twist lock mechanism on the doorknob that was  
12 difficult to grasp and operate without a proper handle.

13 23. The highest operable part of controls, dispensers, receptacles, and other  
14 operable equipment shall be placed within at least one of the reach ranges specified in  
15 4.2.5 and 4.2.6. Electrical and communications system receptacles on walls shall be  
16 mounted no less than 15 in (380 mm) above the floor. 1991 ADA Standards § 4.27.3

17 24. Here, Defendants failed to properly install the paper towel dispenser as it  
18 was installed too high.

19 25. The side wall grab bar shall be 42 inches (1065 mm) long minimum, located  
20 12 inches (305 mm) maximum from the rear wall and extending 54 inches (1370 mm)  
21 minimum from the rear wall. 2010 ADA Standards § 604.5.1. The rear wall grab bar  
22 shall be 36 inches (915 mm) long minimum and extend from the centerline of the water  
23 closet 12 inches (305 mm) minimum on one side and 24 inches (610 mm) minimum on  
24 the other side. 2010 ADA Standards § 604.5.2. Grab bars shall be installed in a  
25 horizontal position, 33 inches (840 mm) minimum and 36 inches (915 mm) maximum  
26 above the finish floor measured to the top of the gripping surface. 2010 ADA Standards  
27 § 609.4.

28 26. Here, Defendants failed to install the grab bars.

1           27. A public accommodation shall maintain in operable working condition those  
2 features of facilities and equipment that are required to be readily accessible to and usable  
3 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

4           28. By failing to maintain the facility to be readily accessible and usable by  
5 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related  
6 regulations.

7           29. The Business has denied and continues to deny full and equal access to  
8 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be  
9 discriminated against due to the lack of accessible facilities, and therefore, seeks  
10 injunctive relief to alter facilities to make such facilities readily accessible to and usable  
11 by individuals with disabilities.

## 12                                   **SECOND CAUSE OF ACTION**

### 13                           **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

14           30. Plaintiff incorporates by reference each of the allegations in all prior  
15 paragraphs in this complaint.

16           31. California Civil Code § 51 states, "All persons within the jurisdiction of this  
17 state are free and equal, and no matter what their sex, race, color, religion, ancestry,  
18 national origin, disability, medical condition, genetic information, marital status, sexual  
19 orientation, citizenship, primary language, or immigration status are entitled to the full  
20 and equal accommodations, advantages, facilities, privileges, or services in all business  
21 establishments of every kind whatsoever."

22           32. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,  
23 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable  
24 for each and every offense for the actual damages, and any amount that may be  
25 determined by a jury, or a court sitting without a jury, up to a maximum of three times the  
26 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any  
27 attorney's fees that may be determined by the court in addition thereto, suffered by any  
28 person denied the rights provided in Section 51, 51.5, or 51.6.



1           33. California Civil Code § 51(f) specifies, “a violation of the right of any  
2 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)  
3 shall also constitute a violation of this section.”

4           34. The actions and omissions of Defendants alleged herein constitute a denial  
5 of full and equal accommodation, advantages, facilities, privileges, or services by  
6 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.  
7 Defendants have discriminated against Plaintiff in violation of California Civil Code §§  
8 51 and 52.

9           35. The violations of the Unruh Civil Rights Act caused Plaintiff to experience  
10 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory  
11 damages as specified in California Civil Code §55.56(a)-(c).

### 12                                   **THIRD CAUSE OF ACTION**

#### 13                           **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

14           36. Plaintiff incorporates by reference each of the allegations in all prior  
15 paragraphs in this complaint.

16           37. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be  
17 entitled to full and equal access, as other members of the general public, to  
18 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,  
19 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,  
20 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes  
21 of transportation (whether private, public, franchised, licensed, contracted, or otherwise  
22 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,  
23 places of public accommodations, amusement, or resort, and other places in which the  
24 general public is invited, subject only to the conditions and limitations established by  
25 law, or state or federal regulation, and applicable alike to all persons.

26           38. California Civil Code § 54.3(a) states, “Any person or persons, firm or  
27 corporation who denies or interferes with admittance to or enjoyment of public facilities  
28 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an



1 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for  
 2 the actual damages, and any amount as may be determined by a jury, or a court sitting  
 3 without a jury, up to a maximum of three times the amount of actual damages but in no  
 4 case less than one thousand dollars (\$1,000) and any attorney's fees that may be  
 5 determined by the court in addition thereto, suffered by any person denied the rights  
 6 provided in Section 54, 54.1, and 54.2.

7 39. California Civil Code § 54(d) specifies, "a violation of the right of an  
 8 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also  
 9 constitute a violation of this section, and nothing in this section shall be construed to limit  
 10 the access of any person in violation of that act.

11 40. The actions and omissions of Defendants alleged herein constitute a denial  
 12 of full and equal accommodation, advantages, and facilities by physically disabled  
 13 persons within the meaning of California Civil Code § 54. Defendants have  
 14 discriminated against Plaintiff in violation of California Civil Code § 54.

15 41. The violations of the California Disabled Persons Act caused Plaintiff to  
 16 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for  
 17 statutory damages as specified in California Civil Code §55.56(a)-(c).

#### 18 **FOURTH CAUSE OF ACTION**

#### 19 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

20 42. Plaintiff incorporates by reference each of the allegations in all prior  
 21 paragraphs in this complaint.

22 43. Plaintiff and other similar physically disabled persons who require the use of  
 23 a wheelchair are unable to use public facilities on a "full and equal" basis unless each  
 24 such facility is in compliance with the provisions of California Health & Safety Code §  
 25 19955 et seq. Plaintiff is a member of the public whose rights are protected by the  
 26 provisions of California Health & Safety Code § 19955 et seq.

27 44. The purpose of California Health & Safety Code § 1995 et seq. is to ensure  
 28 that public accommodations or facilities constructed in this state with private funds

1 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of  
2 Title 1 of the Government Code. The code relating to such public accommodations also  
3 require that “when sanitary facilities are made available for the public, clients, or  
4 employees in these stations, centers, or buildings, they shall be made available for  
5 persons with disabilities.

6 45. Title II of the ADA holds as a “general rule” that no individual shall be  
7 discriminated against on the basis of disability in the full and equal enjoyment of goods  
8 (or use), services, facilities, privileges, and accommodations offered by any person who  
9 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).  
10 Further, each and every violation of the ADA also constitutes a separate and distinct  
11 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an  
12 award of damages and injunctive relief pursuant to California law, including but not  
13 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

#### 14 **FIFTH CAUSE OF ACTION**

##### 15 **NEGLIGENCE**

16 46. Plaintiff incorporates by reference each of the allegations in all prior  
17 paragraphs in this complaint.

18 47. Defendants have a general duty and a duty under the ADA, Unruh Civil  
19 Rights Act and California Disabled Persons Act to provide safe and accessible facilities  
20 to the Plaintiff.

21 48. Defendants breached their duty of care by violating the provisions of ADA,  
22 Unruh Civil Rights Act and California Disabled Persons Act.

23 49. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff  
24 has suffered damages.

#### 25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays for relief and judgment against  
27 Defendants as follows:  
28

1           1.     For preliminary and permanent injunction directing Defendants to comply  
2 with the Americans with Disability Act and the Unruh Civil Rights Act;

3           2.     Award of all appropriate damages, including but not limited to statutory  
4 damages, general damages and treble damages in amounts, according to proof;

5           3.     Award of all reasonable restitution for Defendants' unfair competition  
6 practices;

7           4.     Reasonable attorney's fees, litigation expenses, and costs of suit in this  
8 action;

9           5.     Prejudgment interest pursuant to California Civil Code § 3291; and

10          6.     Such other and further relief as the Court deems just and proper.

11                               **DEMAND FOR TRIAL BY JURY**

12          Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby  
13 demands a trial by jury on all issues so triable.

14  
15 Dated: November 8, 2023

SO. CAL. EQUAL ACCESS GROUP

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17  
18 By: /s/ Jason J. Kim  
19 Jason J. Kim, Esq.  
20 Attorneys for Plaintiff  
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